

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14972 of 2014

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1. Manish Priyadarshi Son of Shri Jagannath Jha, Resident of Buddha Colony, Near Choudhary Market, P.S. Buddha Colony, District Patna

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, Government of India, New Delhi
2. Director General, Central Industrial Security Force, New Delhi
3. Inspector General, Personnel, Central Industrial Security Force, New Delhi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhinav Srivastava

For the Respondent/s : Mr. Sanjay Kumar, ASG

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 12-10-2015

By virtue of the present writ application filed by the petitioner, he wants a mandamus upon the respondent Union of India to grant parity to him in matter of promotion on the post of Commandant and Sr. Commandant under the Central Industrial Security Force (CISF).

2. Shorn of all other unnecessary details, submission of the counsel for the petitioner is that the petitioner was on deputation under Intelligence Bureau beginning 10.10.2005 and he continues to be under deputation under IB. Certain adverse entries, which was not actually adverse but treated to be such, was made in his ACR. The entry in the ACR for the year 2005, 2006, 2007 and 2008 was recorded as Good, which is considered below par in official parlance.



When the turn for promotion on the post of Commandant of the petitioner came, petitioner's claim was overlooked in view of ACR entries. When petitioner came to know as to the reason, he moved the respondent authorities that the sub-par entries were never communicated to him. This denied him opportunity to make a representation for reconsideration of such entry which for all practical purposes are adverse entries, as it formed the basis for non-grant of promotion.

3. Stand of the counsel for the petitioner is that keeping in mind a leading decision rendered on such issue by Hon'ble Apex Court in the case of *Dev Dutt v. Union of India, (2008) 8 SCC 725*, even the Ministry of Personnel, Public Grievances and Pensions have issued office memorandum, with regard to such entries, to bring it conformity with the decision of the Apex Court rendered in Dev Dutt's case (supra).

4. Petitioner was communicated a memorandum dated 11.10.2010, which is Annexure- 1 to the writ application. This memorandum clearly communicates to the petitioner that the ACR entry for the period 10.10.2005 till 2.1.2008, which was considered below benchmark entry, has been upgraded to an overall grading to Very Good for the periods as above. Submission of the counsel for the petitioner, therefore, is that whatever negativity there was in the ACR

now vanishes and that too retrospectively.

5. If this position clearly emerges from Annexure- 1 then keeping the decision of the Hon'ble Apex Court in the case of Dev Dutt as well as an identical matter considered by a Division Bench of Delhi High Court in the case of Shri Tarsem Kumar v. Union of India, which is W.P.(C) No.5649 of 2013, decided on 1st October, 2014, relief has to be granted to the petitioner by giving a direction to grant benefit of promotion and consideration retrospectively. Clearly the case of the petitioner seems to be better placed because herein the respondents have themselves expunged the previous entry of Good and upgraded it to Very Good. He lost out on promotion vis- a- vis his batch-mates because of the said adverse entry. If the adverse entry does not subsist then it should not come in the way of grant of benefit to him, which has been granted from a subsequent date.

6. Counsel for Union of India has filed a detailed counter affidavit. They take a stand that because of the upgradation, his case for promotion as Commandant was considered and granted. The petitioner cannot now be allowed to go back to a previous date when admittedly he was not eligible for consideration for promotion due to the entry in his ACR. Counsel for Union of India also insists that the Ministry of Personnel, Public Grievances and Pensions has



issued a notification/ memorandum dated 14th of May, 2009 which talks in terms of how maintenance and preparation of Annual Performance Appraisal Reports are to be made and how communications are required to be made to maintain fairness and transparency in public administration. Advantage has already accrued to the petitioner by virtue of this office memorandum. Claim of the petitioner, therefore, for a benefit of promotion from prior date on the post of Commandant or a Sr. Commandant does not arise.

7. After having perused the decision of the Hon'ble Apex Court as well as the Division Bench decision of Delhi High Court in the case of Shri Tarsem Kumar, the Court has no hesitation in coming to a conclusion that the respondent authorities cannot take a stand which amounts to blowing hot and cold at the same time. If the memorandum contained in Annexure- 1 did not operate retrospectively, there may not have been a case for consideration in favour of the petitioner. However, since the respondents themselves have upgraded the petitioner to Very Good for the periods, which were considered sub-par for the petitioner, he cannot carry the cross around his neck. No doubt, when the DPC met, those ACR entries came in the way but the sub-par ACRs are non-existent now from the back date so the claim of the petitioner should be considered retrospectively.

8. Since the petitioner has not and cannot hold the office of the higher post from retrospective date, the respondents are required to give only a notional promotion from the time his batch-mates were granted promotion on the post of Commandant, or else it will be an inequitable for the petitioner despite existence of Annexure-1.

Writ is allowed in terms of the above. The respondents must carry out the direction within a reasonable time frame.

(Ajay Kumar Tripathi, J)

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